



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

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FCC 96-119

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Docket #  
96-59

Mr. William F. Caton  
Acting Secretary  
Office of the Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Dear Mr. Caton:

The Small Business Administration (SBA) has received a proposed rule concerning the auctioning of licenses for Commercial Mobile Radio Services (FCC 96-119). However, the Agency received the proposed rule without sufficient time to adequately review it and prepare comments by the April 15, 1996 deadline.

Since the April 15 deadline for comments has passed, SBA is not at this time providing any specific comments on the proposed rule. However, SBA's Office of Size Standards has done some staff work in the areas involving the Commission's proposed small business definition and related provisions where you have solicited comments. If you would like to discuss these areas on an informal basis, my staff would be quite willing to meet and share with you our thoughts and observations on several issues.

I would also like to remind you that Section 3(a)(2) of the Small Business Act does not allow a Federal agency to use for its programs a small business size standard other than one already established by the SBA, unless that agency has obtained prior approval from the SBA Administrator to do so. For your information, I am enclosing a copy of 13 CFR §§ 121.901-903 that discusses procedures for obtaining SBA approval of an agency size standard.

Please feel free to contact me at (202) 205-6618 in this regard.

Sincerely,

Gary M. Jackson  
Assistant Administrator  
for Size Standards

Enclosure

cc: William E. Kennard, Esq., General Counsel

13 CFR §§ 121.901-903 0

**Size Eligibility Requirements for Compliance With Programs of Other Agencies**

**§ 121.901 Can other Government agencies obtain SBA size determinations?**

Upon request by another Government agency, SBA will provide a size determination, under SBA rules, standards and procedures, for its use in determining compliance with small business requirements of its statutes, regulations or programs.

**§ 121.902 What size standards are applicable to programs of other agencies?**

(a) *SBA size standards.* The size standards for compliance with programs of other agencies are those for SBA programs which are most comparable to the programs of such other agencies, unless otherwise agreed by the agency and SBA.

(b) *Special size standards.* (1) Federal agencies or departments promulgating regulations relating to small businesses usually use SBA size criteria. In limited circumstances, if they decide the SBA size standard is not appropriate, then agency heads may establish a small business definition for the exclusive use of such program which is more appropriate, but only when:

(i) The size standard is first proposed for public comment pursuant to the Administrative Procedure Act, 4 U.S.C. 553;

(ii) The proposed size standard provides for determining size measured by average number of employees over 12 months for manufacturing concerns, average annual revenues over three years for concerns providing services, and data over a period of not less than three years for all other concerns (unless approved by SBA, "annual receipts" and "number of employees" must be determined in accordance with §§ 121.104 and 121.106, respectively); and

(iii) The proposed size standard is approved by SBA's Administrator.

(2) In order to receive the approval of SBA's Administrator, the agency head must:

(i) Request approval prior to publishing the proposed rule containing the size standard. The request must include: an explanation of the contemplated industry size standard, the reasons the SBA size standard is not appropriate, and the reasons the proposed size standard would be appropriate; and a certification that there will be compliance with the criteria set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(ii) Agree to provide written notice to SBA's Administrator prior to publishing the contemplated size standard as a final rule. The notice must include: a copy of the intended final rule, including the preamble, or a separate written justification for the intended size standard followed by a copy of the intended final rule and preamble prior to its publication; copies of all public comments relating to the size standard received in response to the proposed rule; and any other supporting documentation relevant to the size standard and requested by SBA's Administrator.

(3) When approving any size standard established pursuant to subsection (b) of this section, SBA's Administrator will ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries, and consider other relevant factors.

(4) Where the agency head is developing a size standard for the sole purpose of performing a Regulatory Flexibility Analysis pursuant to the Regulatory Flexibility Act, the department or agency may, after consultation with the SBA Office of Advocacy, establish a size standard different from SBA's which is more appropriate for such analysis.

**§ 121.903 When does SBA determine the size status of a business concern?**

For the purpose of compliance with programs of other agencies, SBA will base its size determination on the size of the concern as of the date set forth in the request of the other agency.